

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
ROOSEVELT HAYWOOD and)	CASE NO. 01-65238 JPK
ADEL HAYWOOD,)	Chapter 13
)	
Debtors.)	
*****)	
THE LOMBARD COMPANY,)	
Plaintiff,)	
v.)	ADVERSARY NO. 07-2045
ADEL HAYWOOD and)	
PAUL CHAEL, TRUSTEE,)	
Defendants.)	

ORDER REGARDING FILED DOCUMENT

On January 8, 2008, the plaintiff in this adversary proceeding filed a document designated as "Motion to Approve Settlement Agreement", to which was attached as Exhibit "A" a document designated as "Settlement Agreement." This latter document was then separately filed of record on January 22, 2008, with one significant difference in its format: Exhibit "A" did not include any signature of the defendant Paul Chael, Trustee, while the document subsequently filed included a signature for that party.

The "Settlement Agreement" is signed by an "entity" designated as "Plaintiff - Michael Lombard". Michael Lombard was not the plaintiff in this case; rather, the plaintiff is "The Lombard Company". If in fact "The Lombard Company" is an assumed business name for an individual doing business as a sole proprietor, then the signature line on the Settlement Agreement should have indicated that.¹ The defendant Adel Haywood signed the Settlement Agreement individually, which would resolve her consent as an individual to the terms of that agreement. However, the defendants in this case include not only Adel Haywood as an

¹ In this circumstance, the correct designation of the plaintiff would have been "Michael Lombard d/b/a The Lombard Company".

individual, but also Adel Haywood “as Administratrix of the Estate of Roosevelt Haywood, Jr., Deceased”, and there is nothing in the Settlement Agreement which evidences the consent of Adel Haywood in that latter capacity to the agreement. This puts aside the fact that the Settlement Agreement which the Court was requested to approve by means of the motion filed on January 8, 2008 did not evidence consent to its terms by the defendant “Paul Chael, Trustee”, and that no settlement document filed with the Court has been executed by counsel for the plaintiff or counsel for the two "Haywood defendants".

The bottom line is that the documentation provided by the parties to the Court does not evidence consent of all necessary parties to a final resolution of this adversary proceeding. The foregoing recitation by the Court should provide the parties with sufficient information as to the procedures to be followed to effectuate a final resolution, which appears to be the actual intent of the parties. In case the foregoing was not specific enough, here is the preferred format:

1. The parties may utilize a settlement agreement, which if effectively signed by all of the parties would result – according to the terms of the one before the Court – in dismissal of the adversary proceeding, and the parties then being left to enforce their rights pursuant to the terms of a contractual agreement.

2. The preferred format is for the parties to sign an agreed judgment which finally resolves all of the issues in the adversary proceeding. This format has the advantage of a judicially determined judgment which can then be enforced by appropriate means in any court of the United States without the necessity of initiating a separate lawsuit for breach of a contractual agreement. If the “settlement agreement” format is utilized, a breach of that agreement will require the initiation of another lawsuit to enforce its terms.

3. Whichever of the formats under paragraphs number 1 and 2 above the parties choose to utilize, the Court will not deem this adversary proceeding to be finally determined until

either of the following occurs: (a) an agreed judgment signed by all parties in all of their capacities is filed with the Court, accompanied by a motion to approve the judgment – in which case the Court will approve the agreed judgment; or (b) a motion to approve a settlement agreement – which agreement itself is signed by all parties in proper form – has been filed with the Court, in which event the Court will approve a motion which requests the Court to approve the settlement agreement. Under the format utilized by the parties, this latter course will then require the parties to file a motion to dismiss the adversary proceeding after the Court has approved the settlement agreement, if that provision is not included in the motion itself by which approval of the settlement agreement is sought.

IT IS ORDERED that the foregoing Motion filed on January 8, 2008 is denied without prejudice.

IT IS FURTHER ORDERED that the document filed on January 22, 2008 presents nothing to the Court, and that the Court will take no action with respect to that document.

Dated at Hammond, Indiana on February 4, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record